TAN BOON BAK & SONS LTD.

v.

GOVERNMENT OF THE STATE OF PERAK & ANOR.

HIGH COURT MALAYA, IPOH
AJAIB SINGH J
[CIVIL SUIT NO. 368 OF 1981]
20 JULY 1982

LAND LAW: *Acquisition by State Government - Whether 'bona fide' for public purpose - Whether inordinate delay in paying compensation renders acquisition proceedings null and void - Plaintiff did not object to the amount of compensation - Whether entitled to more.*

The plaintiffs sued the defendants in respect of acquisition proceedings over their land of about 22,000 sq.ft. along Lorong Anderson, Ipoh. They sought a declaration that the acquisition proceedings were null and void and of no effect as their land was not *bona fide* for a public purpose, and the unreasonable delay on the part of the Collector in making the payment for the compensation awarded by him contravened s. 29(1) of the Land Acquisition Act and Art. 13(1) of the Federal Constitution. The plaintiffs also sought compensation of over RM500,000, the price which their valuer had valued as on 23 May 1981 when the Collector wrote to them to collect the award.

On 5 July 1973 a preliminary notice that the land was likely to be acquired for an integrated town development project was gazetted and on 20 December 1973 a declaration of intended acquisition was gazetted. After due inquiry the Collector on 14 March 1971 made an award of RM85,841 as compensation and the formal notice was served on the plaintiffs on 22 March 1974. On 29 March 1974 the plaintiffs signed a written acceptance of the compensation with a request that the amount be sent to them by cheque. On 29 December 1980 the SEDC, who was handed the management and development of the project, entered into an agreement with R Holdings Sdn. Bhd. to develop the land on a joint venture basis; the share of profits being 70:30 in favour of R Holdings.

On 23 May 1981 the Collector requested the plaintiffs to call at his office to collect the award of RM85,841 and by notice dated 27 May 1981 which was served on the plaintiffs on 16 July 1981 took formal possession of the land. By letter dated 31 July 1981, the plaintiffs refused to accept the money and informed the Collector that they would be filing proceedings in the High Court to declare the acquisition proceedings null and void.

Held:

[1] The Court is of the view that the plaintiffs cannot succeed in their claim against the defendants.

[2] The project is for a public purpose as well as for a commercial purpose within the meaning of s. 3(a) and (c) of the Land Acquisition Act. There is no evidence whatsoever that the Collector or the State Authority or the SEDC had not acted in good faith in this matter.

[3] On the evidence the Court finds that the defendants, as well as the SEDC, acted *bona fide* in implementing government policy.

[4] The delay of seven years in making the payment of the compensation awarded is definitely inordinate but in all the circumstances of this case the delay does not render acquisition proceedings null and void.

[5] Article 13 of the Federal Constitution has not been contravened in any way. The land was acquired in accordance with the law as prescribed under the Land Acquisition Act 1960 which provides for adequate compensation. The Collector awarded the sum of RM85,841 to the plaintiffs on the market value as at the date of the gazette notification under s. 4 of the Act in accordance with the provisions of the first schedule of the land Acquisition Act.

[6] The plaintiffs did not object to the amount of the compensation awarded to have matter referred to the High Court pursuant to ss. 37 and 38 of the Act. The plaintiffs are entitled to no more than the sum awarded to them by the Collector.

[Plaintiffs' suit dismissed with costs.]

Case referred to:
Pow Hing & Anor. v. The Registrar of Titles, Malacca [1981] 1 MLJ 155

Legislation referred to:
Federal Constitution, art. 13
Land Acquisition Act 1960, ss. 3, (a), (b), (c), 4, 8, 22, 29(1), 37, 38, 68
National Land Code Act 56/1965, ss. 100, 130(1)

For the plaintiffs - N. Selvarajah; Lewis & Co.
For the defendants - Haidar bin Mohamed Noor, SFC
For the SEDC Perak - Ali Noordin, watching brief; Maxwell, Kenion, Cowdy & Jones

JUDGMENT

Ajaib Singh J:

The plaintiffs in this case have sued the State Government and the Collector of Land Revenue in respect of acquisition proceedings over their land of about 22,000 square feet with two single-storey detached houses thereon along Lorong Anderson. They seek a declaration that the acquisition proceedings are null and void and of no effect on two grounds. First that the acquisition of the land was not *bona fide* for a public purpose and secondly that the unreasonable delay on the part of the Collector in making the payment for the compensation awarded by him contravened s. 29(1) of the Land Acquisition Act 1960 and Article 13 of the Federal Constitution. These provisions read as follows:

> Section 29(1) After a notice of award in Form H has been served in the manner prescribed by s. 53 upon all interested persons the Collector shall, as soon as may be, make payment of each amount awarded to the person entitled thereto.
>
> Article 13(1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition of use of property without adequate compensation.

In 1972 the Government decided to proceed with the development of a large tract of land along Jalan Anderson as an integrated suburb and to implement the project a sub-committee was formed with the Menteri Besar as the Chairman. At a meeting held on 11 October 1972 the committee considered a site plan of the project prepared by the Director of the Town and Country Planning Department. The proposed project consisted of blocks of flats, office buildings, an eight-storey hotel, a petrol station, a bank and a supermarket. The cost of the project was estimated at RM19.3 million and the land area was 28.8 acres of which 7.6 acres was private land and had to be acquired. The sub-committee eventually decided at the meeting that the project be handed over to the State Development Corporation Perak (SEDC) for

management and development. The SEDC was to get advice if necessary from consultants for implementing the project and for the acquisition of the private land the SEDC was to get in touch with the Director of Lands and Mines.

On 5 July 1973 a preliminary notice that the land in question was likely to be acquired for an integrated town development project was gazetted under s. 4 of the Land Acquisition Act and on 20 December 1973 a declaration of intended acquisition of the land for a commercial complex was gazetted under s. 8 of the Act. The purpose for the acquisition of the land was somewhat changed but this was well within the provision of the Land Acquisition Act. Together with the plaintiffs' land the other private land in the 7.6 acres belonging to some fifteen owners was also gazetted for acquisition. The Collector then commenced proceedings for the acquisition of the plaintiffs' land and after due inquiry he made an award on 14 March 1974 in the sum of RM85,841 as compensation for the land acquired. The formal notice of the award and offer of compensation was duly served on the plaintiffs on 22 March 1974. There is provision in the Act to have the matter referred to the High Court if a land-owner is dissatisfied with the amount of compensation awarded to him but this course was not pursued by the plaintiffs. They appeared to be satisfied with the sum of compensation offered to them and they signed a written acceptance of the compensation on 29 March 1974 with a request that the amount awarded be sent to them by cheque.

On 29 December 1980 the SEDC entered into an agreement with R Holdings Sdn. Bhd. to develop the land on a joint venture basis the share of profits being 70:30 in favour of R Holdings.

Several years passed from the date of the award before the Collector contacted the plaintiffs again.

By letter dated 23 May 1981 he requested the plaintiffs to call at his office to collect the sum of RM85,841 and by notice dated 27 May 1981 he took formal possession of the land under s. 22 of the Act. This notice was served on the plaintiffs on 16 July 1981 and from that date the ownership of the land was as good as passed to the State Authority. The formality of making a memorial on the register document of title that the land has been acquired and has vested in the State Authority was all that remained to be done. The plaintiffs refused to accept the money and informed the Collector through their solicitors by letter dated 31 July 1981 that they would be filing proceedings in the High Court to declare the acquisition proceedings null and void.

The award of the Collector is a final determination in land acquisition proceedings for it is provided in s. 68 of the Land Acquisition Act that no suit shall be brought to set aside the Collector's award. A reference to the High Court is limited to the determination of the measurement of the land, the amount of compensation, the persons to whom it is payable and the apportionment of the compensation. The High Court cannot set aside the Collector's award on a reference.

Notwithstanding s. 68 of the Land Acquisition Act the High Court has the power to quash land acquisition proceedings by way of certiorari if it can be shown that the Collector or the State Authority acted without or in excess of jurisdiction or that the rules of natural justice were not followed. A writ will also lie if the provisions of the Land Acquisition Act have been abused or have not been complied with strictly. Also if the acquisition proceedings in any way contravene the Federal Constitution.

After giving due consideration to the evidence adduced and the submissions which learned Counsel have made on behalf of the parties I have come to the conclusion that the plaintiffs cannot succeed in their claim against the State Government and the Collector of Land Revenue. The two gazette notifications in respect of the land came within the purposes stated in s. 3 of the Land Acquisition Act 1960. Section 3 states that the State Authority may acquire any land which is needed:

(a) for any public purpose;

(b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or

(c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes.

In the second gazette notification there was a change in the purpose stated therein but this was quite lawful and did not infringe s. 3 of the Act as the land was intended to be used for a commercial complex within s. 3(c) of the Act.

The agreement between the SEDC and R Holdings states that the land is to be converted and subdivided for the development of an integrated township. The gazette notifications also refer to an integrated township and for commercial purposes. Under Phase I of the project there will be 128 units of four-storey shop houses, 17 units of double-storey shop houses and 13 units of double-storey terrace houses. Phase II has a cinema and a commercial complex. R Holdings are to provide also for the infrastructure, car parks, eating stalls and lock-up shops in the area. It will be seen therefore that the project is for a public purpose as well as for a commercial purpose within the meaning of s. 3(a) and (c) of the Land Acquisition Act. And there is no evidence whatsoever that the Collector or the State Authority or the SEDC had not acted in good faith in this matter.

Another grouse of the plaintiffs is that a private developer namely R Holdings would be benefitting from the project by getting a 70 per cent share of the profits. They say that the SEDC has had a raw deal and that the SEDC should have developed the land themselves. But this surely cannot be a legitimate complaint even if the allegations therein are true in the light of the government's new economic policy for bumiputra participation in business and in the socio-economic field.

The SEDC had at first approached the Urban Development Authority for assistance and then gone about trying to get bumiputra business establishments for a joint venture project. Finally they managed to sign up with R Holdings which is a wholly owned bumiputra company. I find on the evidence before me that the defendants as well as the SEDC acted *bona fide* in implementing government policy. In furtherance of this policy that the agreement by the SEDC with R Holdings provides that 45 per cent of the four-storey shop houses and 85 per cent of the two-storey shop houses and two-storey terrace houses shall be sold to bumiputras.

Now to deal with the delay on the part of the Collector in making payment of the compensation awarded. Section 29(1) of the Land Acquisition Act states *inter alia* that the Collector shall as soon as may be make payment of the amount of the award to the person entitled thereto. In the case of *Pow Hing & Anor. v. The Registrar of Titles, Malacca* [1981] 1 MLJ 155 - the Federal Court had occasion to deal with these same words which appear in s. 130(1) of the National Land Code as follows:

130(1) As soon as may be after the making of an order under s. 100 or 129 with respect to any land (that is to say, an order declaring the land forfeit to the State Authority for non-payment of rent or the breach of any condition), the Collector shall publish in the Gazette a notification of forfeiture in Form 8A; and upon such publication, the forfeiture shall take effect as mentioned in s. 131.

In delivering the judgment of the Federal Court in *Pow Hing's case* Abdoolcader J observed that a notification of forfeiture gazetted seven months after the Collector makes his order under s. 100 "can hardly be said to be as soon as may be after the making of an order under s. 100 without stretching that requirement well beyond any conceivable latitude that can be properly given in the circumstances." The Federal Court did not however decide on the validity or otherwise of the Collector's order under s. 100 of the National Land Code as this point was not really in issue in the case.

I think the words "as soon as may be" which appear in a statute should be read as meaning that any person who is required to do something should do it as soon as he is in a position or is able to do so. How soon would this be must depend on the nature of the act to be done and on all the surrounding circumstances. Also if there are good and valid reasons for the delay. Thus in some cases a week's delay might be considered unreasonably long while in some other cases a delay of even several years might not be so. In *Pow Hing's* case it was a simple administrative act of publishing a notice in the gazette which the Collector had all to do and so the delay of seven months was certainly inexcusable.

The position in the present case before me is somewhat different. The sum awarded by the Collector had to come not from the Collector's own funds but from the SEDC and to get the money the Collector had sent a few reminders to the SEDC. Giving his reasons for the delay in providing the money the general manager of the SEDC said that during the relevant years the SEDC was in the process of reorganisation and they also had a number of priority projects on hand. I accept the evidence of this general manager but still the delay of seven years is definitely inordinate and the question to be decided now is whether this delay renders the acquisition proceedings a nullity. I have given considerable thought to this question and would say that in all the circumstances of this case the delay does not render the acquisition proceedings null and void.

There is another reason why the land acquisition proceedings should not be declared null and void inspite of the delay. Until the Collector takes possession of the land under s. 22 of the Land Acquisition Act the land does not vest in the State Authority but remains the property of the landowners. Once the preliminary notice is gazetted under s. 4 of the Act the right of the land-owner is affected to some extent for he may not transfer or otherwise deal with the land but his right to possess the land and to enjoy its benefits and profits is not affected until formal possession is taken by the Collector. In the present case the plaintiffs did in fact receive rents from the two houses and are still receiving them although their right thereto has been extinguished.

Article 13 of the Federal Constitution has not been contravened in any way. The land was acquired in accordance with the law as prescribed under the Land Acquisition Act 1960 which provides also for adequate compensation. In accordance with the provisions of the first schedule in the Land Acquisition Act the value of the land acquired is assessed by the Collector on the market value as at the date of the gazette notification under s. 4 of the Act which in this case was 5 July 1973 and on that basis the Collector awarded the sum of

RM85,841 to the plaintiffs. Under ss. 37 and 38 of the Act the plaintiffs could have made objection to the amount of the compensation awarded and have the matter referred to the High Court but the plaintiffs did not do so. By bringing the present suit the plaintiffs are in effect seeking compensation based on the market value of their land as at 23 May 1981 when the Collector wrote to them to collect the award. The plaintiffs' valuer has valued the land at over half a million dollars but I am afraid the plaintiffs are entitled to no more than the sum awarded to them by the Collector.

The plaintiffs' suit is dismissed with costs.

Also found at [1982] CLJ 499